

30 against the Summer period quota must be made by letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

(e) *Research quota.* See § 648.21(g).

[61 FR 43426, Aug. 23, 1996, as amended at 62 FR 27984, May 22, 1997; 65 FR 33497, May 24, 2000; 66 FR 12911, Mar. 1, 2001; 66 FR 42161, Aug. 10, 2001; 66 FR 45187, Aug. 28, 2001; 67 FR 6880, Feb. 14, 2002; 68 FR 62253, Nov. 3, 2003; 69 FR 62822, Oct. 28, 2004; 70 FR 310, Jan. 4, 2005; 73 FR 4756, Jan. 28, 2008]

EFFECTIVE DATE NOTE: At 76 FR 60631, Sept. 29, 2011, § 648.120 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.120 Scup Annual Catch Limit (ACL).

(a) The Scup Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass FMP.

(2) *Periodicity.* The scup commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Scup Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the scup stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

§ 648.121 Closures.

(a) *Period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) [Reserved]

[62 FR 27985, May 22, 1997, as amended at 65 FR 33497, May 24, 2000]

EFFECTIVE DATE NOTE: At 76 FR 60631, Sept. 29, 2011, § 648.121 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.121 Scup Annual Catch Target (ACT).

(a) The Scup Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Scup Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Scup Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area—(1) Restrictions.* From January 1 through March 15, all trawl vessels in the

§ 648.122

Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39°20'	72°53'
SGA2	39°20'	72°28'
SGA3	38°00'	73°58'
SGA4	37°00'	74°43'
SGA5	36°30'	74°43'
SGA6	36°30'	75°03'
SGA7	37°00'	75°03'
SGA8	38°00'	74°23'
SGA1	39°20'	72°53'

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: *Loligo* squid, black sea bass and silver hake (whiting).

(b) *Northern Gear Restricted Area I—(1) Restrictions*. From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, 5.0-inch (12.7 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available

50 CFR Ch. VI (10–1–11 Edition)

from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA I

Point	N. lat.	W. long.
NGA1	41°00'	71°00'
NGA2	41°00'	71°30'
NGA3	40°00'	72°40'
NGA4	40°00'	72°05'
NGA1	41°00'	71°00'

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area I that are fishing for, or in possession of, the following non-exempt species: *Loligo* squid, black sea bass and silver hake (whiting).

(c) *Transiting*. Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) [Reserved]

(e) *Addition or deletion of exemptions*. The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

(f) *Exempted experimental fishing*. The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required.

Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit specified in § 648.125(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.120.

[65 FR 33497, May 24, 2000, as amended at 65 FR 81765, Dec. 27, 2000; 66 FR 12911, Mar. 1, 2001; 66 FR 39292, July 30, 2001; 67 FR 50372, Aug. 2, 2002; 68 FR 68, Jan. 2, 2003; 68 FR 12814, Mar. 18, 2003; 68 FR 44236, July 28, 2003; 69 FR 41983, July 13, 2004; 70 FR 311, Jan. 4, 2005; 70 FR 35046, June 16, 2005; 73 FR 29999, May 23, 2008; 75 FR 39178, July 8, 2010]

EFFECTIVE DATE NOTE: At 76 FR 60631, Sept. 29, 2011, § 648.122 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.122 Scup specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Scup Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to

be considered by the Scup Monitoring Committee are as follows:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) The commercial quota for each of the three periods specified in paragraph (c)(1) of this section for research quota.

(3) Possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24-hour period (calendar day).

(4) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(5) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (c)(5) of this section.

(6) Minimum mesh size.

(7) Recreational possession limit set from a range of 0 to 50 scup to achieve the recreational harvest limit, set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear.

(11) Season and area closures in the commercial fishery.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(14) Modification of existing AM measures and ACT control rules utilized by the Scup Monitoring Committee.

(b) *Specification of fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified ACLs will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at

§ 648.123

50 CFR Ch. VI (10–1–11 Edition)

which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to ensure that the sector ACL will not be exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement annual measures.

(c) *Distribution of commercial quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer—May–October	38.95
Winter II—November–December	15.94

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(d) *Winter I and II commercial quota adjustment procedures.* The Regional Administrator will monitor the harvest of commercial quota for the Winter I period based on dealer reports, state data, and other available information and shall determine the total amount of scup landed during the Winter I period. In any year that the Regional Administrator determines that the landings of scup during Winter I are less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the FEDERAL REGISTER, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by the amount of the Winter I under-harvest. The Regional Administrator shall also adjust, through publication of a notification in the FEDERAL REGISTER, the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits established through the annual specifications-setting process.

(e) *Research quota.* See § 648.21(g).

§ 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions—(1) Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend

for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. “Top of the regulated portion of the net” means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.122 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.